are only the hand maiden of the law and not its mistress. More often than not such applications would be to cross a "t" or dot an "i". No doubt strictly speaking, in the face of rr. 5 & 7, such applications can be said to be irregular but orders made pursuant to them are save by Rule 194.

The application to have the hearing of encl. (8) adjourned to enable the petitioner to have the errors in the petition corrected by means of a formal application was refused not because the petitioner was precluded from taking out such an application but because Counsel had refused to avail himself of the opportunity given to him to have the hearing of the application encl. (8) adjourned.

As to the order staying all proceedings made on 21 July 1993, it has to be looked at in the context in which it was made - on the application of Counsel for the respondent "because admittedly the petitioner's name is that of a firm not registered". It follows that the stay order is to be understood not to preclude any attempt to rectify the admitted error in the name of the petitioner as given in the petition.

The preliminary objection is over-ruled with costs.

TIONG HUNG MING

v.

KALIMANTAN HARDWOOD SDN. BHD.

HIGH COURT, SIBU
TUAN STEVE L.K. SHIM J.
[SUIT NO. 58 OF 1991]
8 OCTOBER 1993

PRACTICE & PROCEDURE: Application for amendment of judgment - Inclusion of payment of interest - Application made under the "slip rule" - O. 20 r. 11 Rules of the High Court 1980 - Inherent jurisdiction of the Court.

The plaintiff applied that the judgment of the Court be amended or varied by including therein an order for the payment of interest at 8% p.a. from the date of judgment until it is satisfied. Counsel for the plaintiff contended that he did not ask for the inclusion of interest on the said judgment through an accidental slip or ommission on his part as he was under the impression that the judgment had provided for such interest. Counsel further relied on O. 42 r. 12 Rules of the High Court 1980 (RHC 1980) which provides for all judgment debts to carry interest at 8% p.a.

The defendant opposed the application principally on the grounds that the amendment sought by the plaintiff will necessitate in the defendant having to refile his notice of appeal and other relevant documents and thus prejudice the defendant's appeal to the Supreme Court.

Held:

[1] There was no rationale for the defendant's proposition relating to the appeal which in any event has no relevance to the merits of the plaintiff's application. In the circumstances the question of prejudice as alleged by the defendant does not arise.

[2] At the trial the Court's mind was primarily drawn to the lengthy arguments and submissions of Counsel for the parties concerned which had concentrated essentially on matters other than on interest. The judgment therefore was confined to the issues canvassed before the Court. Nevertheless had the issue of interest been raised at the time of delivery of judgment, it would have been granted. In the circumstances and having regard to O. 42 r. 12 RHC 1980 the plaintiff's application should be allowed.

[Plaintiff's application allowed with no order as to costs].

Case referred to:
Tak Ming Co. Ltd. v. Yee Sang Metal Supplies Co. [1973] 1 All ER 569 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 20 r. 11, O. 42 r. 12

For the plaintiff - Dr. Chew Peng Hui; M/s. Battenberg & Talma
For the defendant - Arthur Lee; M/s. Arthur Lee & Co.

JUDGMENT

Steve L.K. Shim J:
By summons in chambers dated 23 July 1993, the plaintiff has applied that the judgment pronounced by this Court on 15 May 1993 be amended or varied by including therein an order for payment of interest at 8% p.a. from the date of judgment until it is satisfied. The plaintiff has invoked the inherent jurisdiction of the Court as well as but more specifically on what is commonly called the "slip rule" under O. 20 r. 11 which stipulates:

> Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by summons without an appeal.

The grounds stated in the application are

(1) that there is an accidental slip or omission and
(2) that O. 42 r. 12 provides for all judgment debts to carry interest at 8% per annum.

In support, Dr. Chew Peng Hui, advocate for the plaintiff has affirmed an affidavit stating in effect that when the judgment was pronounced on 15 May 1993, he did not ask for the inclusion of interest on the said judgment through an accidental slip or omission on his part as he was under the impression that the judgment had provided for such interest.

The defendant in opposing the application has filed an affidavit in opposition affirmed by Mr. Arthur Lee, its advocate, stating in effect:

(1) that since the judgment made no reference to the plaintiff's claim for interest, the Court had therefore not minded to grant interest on the judgment and hence the omission to grant such interest was not made inadvertently nor accidentally;
(2) that any such amendment sought by the plaintiff will necessitate in the defendant having to refile his notice of appeal and other relevant documents and thus prejudice the defendant's appeal to the Supreme Court.

In the course of his submission before me Mr. Arthur Lee seems to have concentrated his argument on the second issue. He has contended that the amendment sought for might impose "an additional procedural burden" (as he puts it) upon the defendant pertaining to its application for extension of time to file and serve the relevant notice of appeal to the Supreme Court. I do not see the rationale of such a proposition nor do I think it has any relevance to the merits of this application in any event. In the circumstances, the question of prejudice as alleged by the defendant does not arise.

Now, I think that in this application the Privy Council case of *Tak Ming Co. Ltd. v. Yee Sang Metal Supplies Co.* [1973] 1 All ER 569 has particular relevance. The factual situation in that case is not entirely dissimilar to the instant case. There, the respondents brought an action against the appellants in the Supreme Court of Hong Kong. By their statement of claim the respondents claimed a balance sum and interest thereon. Pickering J. gave judgment in favour of the respondents on the issue of liability, the amount owing to be assessed but omitted to make an award of interest. The judgment was not read but handed down in open Court and the omission was not noticed by Counsel before leaving Court. A few days after the balance sum was assessed, the respondents applied by summons *inter partes* for an order that interest should be paid by the appellants on that sum. The summons was heard by another Judge, Briggs J. in chambers and he dismissed it on the ground that he had no jurisdiction to make such an award. Subsequently, the respondents applied by notice of motion for an order that Pickering J's judgment be amended under the slip rule by the inclusion of an award of interest. This application was heard by Pickering J. and he decided that the correction should be made. His decision was affirmed by the full Court. From that decision, the appellants appealed to the Privy Council. The Privy Council held that the order correcting his judgment had been properly made by Pickering J. In holding thus, Lord Pearson accepted the reasoning advanced by Pickering J. in the Supreme Court of Hong Kong who said as follows:

> A most important matter for me to consider is what I would have done at the time I gave

judgment had this matter of interest been in my mind. After a lengthy trial, in the course of which both sides asked me to confine my decision to the issue of liability, and having written a long judgment which occasioned to me no small difficulty, my mind was on the issue of liability rather than upon any figures. But had I thought the matter through further, as I should have done, I am in no doubt whatever ... that I would have made an award of interest.

Taking the cue from Pickering J. I have to state that in the instant case, my mind was primarily drawn to the lengthy arguments and submissions of Counsel for the parties concerned which had concentrated essentially on matters other than on interest. Not unnaturally therefore my judgment was confined to the issues canvassed before me. Nevertheless, had the matter of interest been raised by Dr. Chew at the time I delivered judgment, I would have granted it. In the circumstances and having regard to O. 42 r. 12, I will allow this application and order that the judgment dated 15 May 1993 be amended to include an award of interest on the judgment sum at the rate of 8% per annum from date of judgment until it is satisfied. There will be no order as to cost on this application.

YAP KOK HENG (T/A EHSAN ENTERPRISE)

v.

INTERNATIONAL AUTO ENTERPRISE SDN. BHD.

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[CIVIL APPEAL NO. R2-12-105-92]
19 OCTOBER 1993

CONTRACT: Forfeiture of deposit on non-completion of sale - Whether money paid was in fact a deposit - Whether contract between the parties provided for forfeiture.

The plaintiff entered into a contract for the purchase of a motor lorry from the defendant and paid a sum of RM4,000 in pursuance of the contract. The plaintiff failed to pay the balance of the purchase price despite being issued a notice by the defendant and the defendant forfeited the amount paid and sold the lorry to a third party.

The plaintiff sued for the return of the sum paid contending that the defendant had no right under the contract to forfeit the sum of RM4,000. The plaintiff further contended that time was not made of the essence and that in the event of delay the defendant was only entitled to storage charges. The plaintiff's claim was dismissed by the Sessions Court and the plaintiff appealed further.

Held:

[1] The fact that the payment of a sum of money in a purchase agreement is not expressed 'as a deposit and part payment of purchase money' does not for that reason alone render the payment not a true deposit or earnest money. The intention of the parties with regard to the payment as earnest money may be gathered by examining the agreement as a whole.

[2] It is clear that it was the intention of both the plaintiff and the defendant that the sum of RM4,000 was to be a deposit and part payment towards the purchase price. It was a true deposit or earnest money.

[3] Section 47 of the Contracts Act 1950 provides that when no time for performance of a promise is specified, the engagement must be performed within a reasonable time. The 7 days notice issued by the defendant to the plaintiff to complete the sale was a reasonable time for the plaintiff to perform his promise in the circumstances of the case.